IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.153 OF 2006
WITH
CIVIL APPLICATION NO.202 OF 2006

Onkarsingh Kalra & Ors. ... Appellants

Vs.

Hazoor Singh Kalra ... Respondent

Mr. Anil Singh i/b Mr. S.R. Saudagar for the appellants.

None for the respondent.

CORAM : A.M. KHANWILKAR, J.

DATED : 10TH JULY, 2006.

P.C.:-

1. Heard counsel for the appellants. None appears for the respondent though served and entered appearance through advocate.

2. This appeal from order takes exception to the judgment and order passed by the Bombay City Civil Court dated 12/1/2006 in Notice of Motion No.4778 of 2005 in S.C. Suit No.5306 of 1992.

3. The parties are closely related to each other. Appellant No.1 and the respondent are real brothers. The property in question is a bungalow situated at 54, Lady Jamshedjee Road, Mahim, Bombay - 400 016. For the purposes of present appeal, the limited controversy is whether the trial court is right in requiring the appellants to remove the partly erected wall in the bathroom within the stipulated time. It is not in dispute that there are two bathrooms. For the sake of convenience of the parties, the bigger bathroom was divided into two parts by erecting a wall. The respondent/plaintiff took out Notice of Motion No.4778 of 2005 praying for the following reliefs during the pendency of the suit.

> "(a) that pending the hearing and final disposal of the suit, the Defendants may be restrained by an Order and Injunction of this Hon' ble Court from carrying out any structural alterations, additions, modifications or variations in the suit premises either by themselves or through their servants, agents or representatives;
>
> (b) that this Hon' ble Court may be pleased to appoint any Officer of this Hon'ble Court Commissioner to forthwith visit and inspect the `suit premises' on the ground floor of the Bungalow known as Laxmi Niwas (Phoroz Villa) situated at 54, L.J. Road, Mahim, Mumbai - 400 016, which is in joint occupation and use of the parties of this suit and to report to this Hon'ble Court of all the structural alterations and additions carried out therein by the Defendants and/or by any one or more of them;

(c) that the Defendants be directed to pay to the Plaintiffs costs of this Motion and costs, charges and expenses of the Commissioner to be appointed by this Hon'ble Court;

(d) such further and other reliefs may be granted to the Plaintiff as the circumstances of the case may require."

4. The trial court while considering the said relief has passed the following order:

"Defendant is again directed to maintain the status-quo in respect of the entire suit structure as it is along with the user of the parties as earlier ordered in the year 1993.

If any alteration and additions are requried because of the nature of the premises or condition of the premises, Defendant is always at liberty to take out the appropriate proceeding in the Court.

Now the Defendants is hereby directed to remove the partly erected wall in the bathroom within eight days from today and restore the status-quo of the said bathroom. No order as to costs.

Notice of Motion No.4778/05 is made absolute accordingly.

Suit is already adjd. to 07-02-2006."

5. Insofar as the first part of the order, the trial court is concerned, that does not warrant any interference because the parties to the suit will have to

abide by the status-quo with regard to the entire suit structure and of its user by the respective parties. However, the trial court has observed that the user of the suit premises by the parties will have to be as earlier ordered in the year 1993. The trial court proceeded on the assumption that there was order of status-quo against the parties not to change the structure in any manner. On the other hand, the interim arrangement which was directed to be observed by the trial court in terms of order dated 11/3/1993 was only limited in terms of prayer clause (b) of the Notice of Motion No.4497 of 1992. The relief in prayer clause (b) of the said notice of motion reads thus:

> "(b) To restrain the Defendants, their servants and agents by an order of temporary injunction from parting with possession of any of the articles or things belongs to the Plaintiff and lying in the suit premises and/or any articles or things particularised in Para 16 of the Plaint";

6. In the context of this relief, the trial court while considering the Notice of Motion No.4497 of 1992 passed the following order :

> "The Notice of Motion being No.4497 of 1992 in S.C. Suit No.5306 of 1992 is partly disallowed and partly made absolute. The prayer clauses (a), (c), (d), (e), (f) and (g) stand disallowed. So far as regards prayer (b), the parties to maintain the status-quo till the hearing and final disposal of the suit. As regards prayer clause (h), the Defendants, their servants and agents are hereby restrained by an order of

> temporary injunction from interfering Plaintiff's use of kitchen from 8.30 a.m. to 9.30 a.m. from 12 noon to 1.30 p.m., from 4.00 p.m. to 5.00 p.m. and from 8.00 p.m. to 9.30 p.m. At the same time, the Plaintiff is hereby directed not to interfere the use of the said kitchen by the Defendants or their family members during the rest of the period of day. In the circumstances there is no order as to costs. The Plaintiff to serve Writ of Summons upon the Defendants before the next adjourned date. Suit to be placed on board on 23rd April 1993."

7. I am in agreement with the stand taken on behalf of the appellants that the order of status-quo as passed on 11/3/1993 will have to be construed in the light of the relief claimed in terms of prayer clause (b) of the Notice of Motion No.4497 of 1992. Thus understood the basis on which the trial court has passed the impugned direction, which is in the nature of mandatory order, while deciding the Notice of Motion No.4778 of 2005 cannot be countenanced.

8. The trial court has plainly proceeded on the assumption that the order of status-quo passed in the year 1993 obliged the appellants to maintain the status of the suit structure as it is. It is not possible to accept that opinion recorded by the trial court.

9. Besides, there is substance in the stand taken by the appellants that assuming that the appellants had erected wall contrary to the order of status-

quo, in the subject notice of motion, which was filed by the respondent, no relief even remotely is claimed by the respondent requiring the appellants to remove the partition wall erected in the big bathroom. That direction being mandatory order could not have been passed without specific relief prayed by the respondent in the notice of motion. To support the above position, the appellants have rightly invited my attention to the order passed in the subject notice of motion as quoted above.

10. In my opinion, assuming that the trial court could have granted mandatory order requiring the appellants to remove the partly erected bathroom partition wall, such order could be passed only on relief claimed in that behalf by the opposite party and for reasons to be recorded which ought to be in exceptional situation. Thus understood, this appeal ought to succeed, the same is partly allowed to the limited extent of setting aside the direction given by the trial court requiring the appellants to remove the partly erected wall in the big bathroom within the specified time.

11. Counsel for the appellants has fairly drawn my attention to the fact that the order passed by the trial court against the appellants on the application for regularisation of the structure has been rejected which order has not been challenged. The issue of regularisation will arise only if this court were to

uphold the direction of the court, which is founded on the basis that the wall was partly erected in the big bathroom inspite of order of status-quo operating in favour of the appellants. I have already taken a view that there was no order of status-quo against the appellants to carry out such construction. Indeed, in view of the order which is impugned in this appeal dated 12/1/2006, the appellants will not be entitled to carry on any further construction in the said premised unless appropriate proceedings are resorted to for such proposed alteration. Appeal as well as the civil application are disposed of in the above terms with no order as to costs.

[A.M. KHANWILKAR, J.]